

2005 WL 3358086 (Ariz.Super.) (Trial Pleading)
Superior Court of Arizona.
Pima County

Ricky A. MALDONADO, personal representative of the Estate of Ralph P.
Maldonado; Ricky A. Maldonado, a single man, in his individual capacity, Plaintiff,

v.

Daniel P. MALDONADO, Ernesto Albert Maldonado, Ralph Maldonado III, Norma
Christine Maldonado, and Servicemembers' Group Life Insurance a division of Prudential
Life Insurance Company of America, a foreign insurance company, Defendants.

No. C20050519.
January 27, 2005.

**Verified Complaint (Citation Petition Pursuant to [A.R.S. §14-3709](#); Undue Influence,
Incapacity; Breach of Fiduciary Duty; Elder Exploitation Pursuant to [A.R.S. §46-456](#))**

[Jonathan W. Reich](#), P.C., 2606 E. Tenth Street, Tucson, Arizona 85716, (520) 323-2290, Jonathan Reich PCC#47188, Co-Counsel for Plaintiff.

Law Offices of Edward Laber, 33 N. Tucson Blvd., Tucson, Arizona 85716, (520) 624-3000, Edward Laber PCC#32548, Co-Counsel for Plaintiff.

[Michael D. Alfred](#).

Plaintiff alleges for his complaint as follows:

Parties

1. Plaintiff is the personal representative of the Estate of Ralph P. Maldonado, Pinal County Superior Court, Cause No. PB 20040344. Plaintiff is also the natural child of Ralph P. Maldonado and rightful heir and beneficiary of insurance and other possible benefits. (See copies SGLI Beneficiary Election forms - Attachment A).
2. Defendant Daniel P. Maldonado is decedent's brother and a resident of Pima County. He was also acting financial and medical agent under a power of attorney executed by decedent on October 20, 2004.
3. Defendants Ernesto Albert Maldonado, Ralph Maldonado III and Norma Christine Maldonado are named because they are interested parties and may have rights affected by these proceedings.
4. Defendant Servicemembers' Group Life Insurance, a division of Prudential Insurance Company of America is an insurance company which issued life insurance to the decedent. It is a defendant only so that this Court has jurisdiction to order it to hold distribution of life insurance proceeds pending the outcome of this matter. The proper beneficiary of this life insurance policy is in dispute.

Jurisdiction and Venue

5. The events complained of occurred in Arizona and the County of Pima. According to [A.R.S. §14-3709\(B\)](#), the personal representative of an estate may cite a person into Court in the County where he is found. As set forth above, Defendant Daniel P. Maldonado is a resident of Pima County. Jurisdiction and venue are proper in Pima County Probate Court.

General Allegations

6. Decedent died on October 21, 2004. (See copy of death certificate dated October 21, 2004 - Attachment B).

7. On October 20, 2004, Defendant Daniel P. Maldonado obtained decedent's signature on a durable financial power of attorney making Defendant Daniel P. Maldonado a fiduciary and subject to the terms of [A.R.S. §14-5506](#). (See Copy of POA - Attachment C)

8. On at least October 20, 2004 and until the end of his life, decedent was incompetent and unable to make decisions regarding estate planning, insurance beneficiaries or any other financial decisions. Decedent was in hospice at that time and was described in medical records as non-responsive and not fully oriented during the times in question. (See copy of November 17, 2004 of David Ben-Ascher, M.D. and relevant medical records, Attachment D).

9. On October 20, 2004, Defendant Daniel P. Maldonado presented decedent with a pre-typed form to change the beneficiaries of a certain insurance policy issued by the Servicemembers' Group Life. Despite decedent's condition, Defendant Daniel P. Maldonado had decedent sign a form which completely changed decedent's estate plan and previous declarations. Defendant Daniel P. Maldonado took advantage of his fiduciary relationship and trust to press his own agenda and goals. The new beneficiary designation named the three Defendants Ernesto Albert Maldonado, Ralph Maldonado III and Norma Christine Maldonado as beneficiaries of the life insurance policy and Defendant Daniel P. Maldonado as contingent beneficiary. (See Copy of Beneficiary. (See copy of said form - Attachment E).

10. Defendant Daniel P. Maldonado also used the power of attorney to make transfers of assets for his own personal agenda. Plaintiff is aware that Defendant Daniel P. Maldonado tried to withdraw funds from decedent's bank account that were in joint tenancy with Plaintiff until he disclosed to the bank that decedent had already passed away. The bank took steps to stop the transfer at that point. Upon information and belief, Defendant Daniel P. Maldonado made additional transfers or changes that he needs to account for. (See copy of DMFCU statement dated 10/31/04 - Attachment F).

Actions Against Defendants

1. Based upon the above factual allegations, Defendant Daniel P. Maldonado has committed elder exploitation pursuant to [A.R.S. §46-456](#), has breached his fiduciary relationship with decedent, has had decedent sign documents that he was incapable of understanding and that were prepared by himself, he has abused a confidential relationship creating a presumption of constructive fraud, and he has converted or attempted to convert assets to himself or to others.

12. Defendants Ernesto Albert Maldonado, Ralph Maldonado III and Norma Christine Maldonado have been wrongfully made beneficiaries of assets they have no right to. These Defendants should not take anything from decedent's life insurance policy or by other designations caused by Defendant Daniel P. Maldonado.

13. Defendant Servicemembers' Group Life Insurance, a division of Prudential Insurance Company of America is simply an insurance company requesting direction from the Court. Plaintiff requests that this Court enjoin Defendant Servicemembers' Group Life Insurance, a division of Prudential Insurance Company of America from distributing the life insurance proceeds until this matter has been decided. SGLI has indicated that without a restraining order it will distribute on February 4, 2005 (See copies of correspondence - Attachment G).

14. [A.R.S. §46-456\(E\)](#) incorporates the remedies set forth in [A.R.S. § 46-455\(G\)](#) which states as follows:

Prior to a determination of liability, the orders may include, but are not limited to, entering restraining orders or temporary injunctions or taking such other actions, including the acceptance of satisfactory performance bonds, the creation of receiverships and the appointment of qualified receivers and the enforcement of constructive trusts, as the court deems proper.

Plaintiff requests that this Court enjoin the proceeds of the life insurance as discussed above.

15. Pursuant to [A.R.S. §14-3709](#), Plaintiff requests that Defendant Daniel P. Maldonado appear before this Court to explain his actions and to disclose any assets taken using the power of attorney or otherwise.

WHEREFORE Plaintiff requests judgment against Defendants as follows:

A. Defendant Daniel P. Maldonado

- (1) An Order citing Daniel P. Maldonado into Court;
- (2) Damages for any assets converted;
- (3) Such other damages as determined by the evidence;
- (4) Attorney's fees, consequential damages and all costs incurred pursuant to [A.R.S. §46-456](#); and
- (5) Such other relief appropriate under the circumstances.

B. Defendants Ernesto Albert Maldonado, Ralph Maldonado III and Norma Christine Maldonado

- (1) An Order showing these Defendants have no interest in the life insurance policy in question and any other assets that Defendant Daniel P. Maldonado is responsible for changing;
- (2) Costs incurred; and
- (3) Such other relief appropriate under the circumstances.

C. Defendant Servicemembers' Group Life Insurance, a division of Prudential Insurance Company of America

- (1) An Order directing this Defendant to hold the proceeds until the Court directs the proper beneficiary.

DATED this 25 day of January, 2005.

JONATHAN W. REICH, P.C.

By: Jonathan Reich

Co-Counsel for Plaintiff

LAW OFFICES OF EDWARD LABER

By: Edward Laber

Co-Counsel for Plaintiff

End of Document

© 2015 Thomson Reuters. No claim to original U.S. Government Works.